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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Civil Revision No.189 of 2006

Applicants

1. Abdul Nayeem, Aged about – 54 years, S/o – Haji Abdul Rahim, Occupation – Unemployed, R/o – Ahmedji Colony, Maulana Abdul Rauf Ward, Raipur (C.G.)
2. Abdul Kayyum, Aged about – 52 years, S/o – Haji Abdul Rahim, Occupation – Unemployed, R/o – Ahmedji Colony, Maulana Abdul Rauf Ward, Raipur (C.G.)
3. Abdul Kareem, Aged about 49 years, S/o – Abdul Rahim, Occupation – Unemployed, R/o – Ahmedji Colony, Maulana Abdul Rauf Ward, Raipur (C.G.)

versus

Respondents

1. Nagar Palik Nigam, Through : Commissioner, Nagar Palik Nigam, Malviya Road, Raipur (C.G.)
2. Court Appellate Samiti, Nagar Palik Nigam, Raipur, Nagar Palika Bhavan, Malviya Road, Raipur (C.G.)
3. Hajiyani Saida Jamal, Aged about 55 years, W/o Haji Mohammad Jamaluddin, R/o – In front of Raipur Bakery, Madarsa Road, Baijanathpara, Raipur (C.G.)
4. Hamida Begum, Aged about – 54 years, S/o Haji Abdul Rahim, R/o – Sanjay Nagar, Raipur (C.G.)
5. Aamna Begum, Aged about 53 years, W/o Shabbir Kureshi, Laxminagar, Behind Marble Line, Ring Road, Raipur (C.G.)
6. Hajiyani Aisha Begum, Aged about 52 years, W/o Haji Aishanul Hak, Irrigation Colony, Bilaspur (C.G.)
7. Farida Khan, Aged about 50 years, W/o Talat Khan, R/o Swaran Jayanti Nagar, Ring Road No.2, H.No. 65, Bilaspur (C.G.)
8. Wahida Begum, Aged about 48 years, W/o Dr. Tanveer Ahmed, R/o Parradah – Mominpara,

Ambikapur, District Surguja (C.G.)
Respondents No. 3 to 8 all are residents of Hajiyani Saida Jamal Madarsa Road, In front of Raipur Bakery, Baijnathpara, Raipur (C.G.)

Civil Revision under Section 115 of Code of Civil Procedure

Present : Applicants by Shri Goutam Bhaduri, counsel.
Respondents No.1 and 2 by Shri Pankaj Agrawal,counsel.
Respondents No. 3 to 8 by Shri Anil Pandey, counsel.

ORAL ORDER

(Passed on 9th May, 2007)

Heard.

2. This Civil Revision is directed against an order dated 27.10.2006 passed by Shri Rakesh Kumar Verma, VIIth Civil Judge Class-II, Raipur (henceforth 'the lower Court') in Civil Suit No. 26-A of 2006, rejecting the application under Order 7 Rule 11 of the Code of Civil Procedure (henceforth 'the Code') filed by the applicants/defendants.

3. Admittedly, respondents No.3 to 8 are the daughters and the applicants are the sons of late Haji Abdul Rahim.

4. Respondents No. 3 to 8 filed Civil Suit No.26-A of 2006 before the VIIth Civil Judge Class-II, Raipur for a declaration that the order dated 8.3.2006 passed by respondents No.1 & 2 herein mutating the names of the applicants herein over the suit property was void and for a permanent injunction for restraining the applicants herein from alienating or transferring the suit property in any manner. It was pleaded that the applicants herein, in order to deprive them from the suit property, had, in collusion with a land mafia, got the signatures of

late Haji Abdul Rahim over a *Hibanama* relating to the suit property. Respondents No. 3 to 8/plaintiffs had preferred an objection in the mutation proceedings before the Municipal Corporation, Raipur, i.e., Revenue Case No.109/RC/2002, during pendency of which, Haji Abdul Rahim died. On 11.09.2002, the names of the applicants/defendants as also respondents No.3 to 8/plaintiffs were jointly mutated over the suit house. An appeal was preferred by the applicants/defendants before the Appeal Committee, Municipal Corporation, Raipur. Vide order dated 8.3.2006, the names of the applicants/defendants were mutated over the suit house.

5. The applicants/defendants filed an application under Order 7 Rule 11(d) read with Section 151 of the Code for rejection of the plaint on the ground under sub-section (6) of Section 403 of the Chhattisgarh Municipal Corporation Act, 1956 (henceforth 'the Act, 1956') that since no appeal or revision lies against the decision of the Appeal Committee, the jurisdiction of the Civil Court was impliedly barred. It was also stated that since the plaintiffs had not challenged the *Hibanama* executed by Hazi Abdul Rahim, the suit was not maintainable and no cause of action arose in favour of the plaintiffs.

6. The learned lower Court dismissed the said application by the impugned order dated 27.10.2006 on the ground that the suit was for a declaration and permanent injunction and since the jurisdiction of the Civil Court was not specifically barred under Section 403(6) of the Act, 1956, rejection of the plaint on the basis of the plaint allegations was not called for. It granted liberty to the applicants/defendants to raise all such objections in the written statement.

7. Shri Goutam Bhaduri, learned counsel for the applicants/defendants placed reliance on ***Raja Ram Kumar Bhargava (dead) by L.Rs.*** **vs.** ***Union of India,*** **AIR 1988 SC 752** in support of his contention that exclusion of the Civil Court's jurisdiction is impliedly barred under Section 403(6) of the Act, 1956. Placing reliance on ***Vinay Krishna*** **vs.** ***Keshav Chandra and another,*** **AIR 1993 SC 957** and ***Ram Saran and another*** **vs.** ***Smt. Ganga Devi,*** **AIR 1972 SC 2685**, it was also contended that since respondents No.3 to 8/plaintiffs were not in possession of the suit property, a mere suit for declaration was not maintainable under Section 34 of the Specific Relief Act.

8. On the other hand, Shri Anil Pandey, learned counsel for respondents No.3 to 8/plaintiffs contended that the plaintiffs had moved an application for amendment of the plaint claiming relief for declaration that the *Hibanama* executed by Haji Abdul Rahim was void. It was argued that the jurisdiction of the Civil Court was not specifically barred. It was also contended that the case of ***Raja Ram Kumar Bhargava (dead) by L.Rs.*** **vs.** ***Union of India*** (supra) cited by the applicants/defendants was clearly distinguishable because in that case the remedy of a civil suit was not provided under common law, whereas, in the present case, on the basis of the plaint allegations, cause of action arose in favour of respondents No.3 to 8/plaintiffs for invoking the jurisdiction of the Civil Court claiming the relief of declaration and permanent injunction.

9. Having considered the rival submissions, I have perused the copies of the documents filed along with the application for revision.

10. The plaint (Annexure-5) filed by respondents No.3 to 8/plaintiffs nowhere shows that the plaintiffs are not in possession of the disputed property. It is well settled that an application under Order 7 Rule 11 of the Code is to be decided only on the basis of the pleadings contained in the plaint. As submitted by learned counsel for respondents No.3 to 8/plaintiffs, they have now also prayed for the relief of a declaration that the *Hibanama* executed by Haji Abdul Rahim was void. Under Section 403(6) of the Act, 1956, no appeal or revision lies against the decision of the Appeal Committee. However, this decision taken by the Appeal Committee is regarding the propriety of the mutation proceedings. So far as the relief of declaration that the *Hibanama* executed by Haji Abdul Rahim was void and did not confer any valid title on the applicants/defendants and the relief of permanent injunction restraining the applicants/defendants from alienating or transferring the suit house in any manner are concerned, these reliefs lie exclusively within the domain of the Civil Court and the jurisdiction of the Civil Court is not barred.

11. In this view of the matter, I am of the considered opinion that on the basis of the pleadings contained in the plaint and also considering the fact of amendment therein, it cannot be said that jurisdiction of the Civil Court is barred or that the suit was not maintainable. The learned lower Court thus rightly rejected the application under Order 7 Rule 11 of the Code while granting liberty to the applicants/defendants to raise all such objections in the written statement.

12. Accordingly, I find no merit in this revision, which is dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Gogal